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OIL, GAS AND MINERAL LEASE

THIS AGREEMENT made this 16th day of September, 2009, between, **Redi-Mix LLC, a Limited Liability Company** (whether one or more), whose address is **1100 Westpark Way, Euless, Texas 76040** and **XTO Energy Inc.,** whose address is: **810 Houston St., Fort Worth, Texas 76102**, Lessee, WITNESSETH:

1. Lessor, in consideration of ten dollars and other valuable consideration, receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, telephone lines, employee houses and other structures on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land," is located in the County of **Tarrant**, State of Texas, and is described as follows:

Being 4.60 acres of land, more or less, out of the Wade Hudson Survey, Abstract No. 716, Tarrant County, Texas, and being more particularly described in a Warranty Deed with Vendor's Lien dated August 12, 1983 from Lee W. Graham, Jr. and wife, Vera M. Graham to Redi-Mix, Inc., a Texas Corporation recorded thereof Volume 7589, Page 1003, Official Deed Records of Tarrant County, Texas, and amendments thereof, including streets, easements and alleyways adjacent thereto, and any riparian rights.

This is a non-development Oil, Gas and Mineral Lease, whereby Lessee, its successors or assigns, shall not conduct any operations, as defined herein, on the surface of said lands. However, Lessee shall have the right to pool or unitize said lands, or part thereof, with other lands to comprise an oil and/or gas development unit. This clause shall take precedence over any references to surface operations contained within the preprinted portion of this lease.

Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For the purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 4.60 acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus as lump sum consideration for this lease and all rights and options hereunder.

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of 1 year from the date hereof, hereinafter called "primary term," and as long thereafter as oil and gas is produced from said lands or land which is pooled hereunder said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal 22.50% part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such 22.50% part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to bear 22.50% of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, 22.50% of the amount realized by Lessee, computed at the mouth of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of 22.50% of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or value at the well or mine at Lessee's election, except that on sulphur mined and marketed the royalty shall be one dollar (\$1.00) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing oil or gas, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as said wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize, or market the minerals capable of being produced from said wells, but in the exercise of such diligence, Lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to Lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to **fifty dollars (\$50.00)** for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each such payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in such bank as directed by Lessor, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be, entitled to receive same. Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereof, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In the event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance; provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas, other than casinghead gas, (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir, (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement, are permitted or required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size permitted or required by such governmental order or rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Such unit shall become effective as of the date provided for in said instrument or instruments but if said instrument or instruments make no such provision, then such unit shall become effective on the date such instrument or instruments are so filed of record. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after operations or production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit, after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the accrual of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 5 hereof, except that Lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force Lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time there is no unitized minerals being produced from such unit. Any unit formed may be amended, re-formed, reduced or enlarged by Lessee at its election at any time and from time to time after the original forming thereof by filing an appropriate instrument of record in the public office in which the pooled acreage is located. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 4 with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations, as to the released acreage or interest.

6. Whenever used in this lease the word "operations" shall mean operations for and/or any of the following: preparing the drillsite location and/or access road, drilling, testing, completing, reworking, recompleting, deepening, sidetracking, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than from Lessor's water wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet to the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations, and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns, and successive assigns. No change or division in the ownership of said land, royalties, or other moneys, or any part thereof, howsoever effected, shall increase the obligations or diminish the rights of Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof of or to Lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys, or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until sixty (60) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts, or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event Lessor considers that Lessee has not complied with all its obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall then have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained and shall not be required to move or remove any existing surface facilities necessary or convenient for current operations.

10. Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes or other liens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. If this lease covers a less interest in the oil, gas, sulphur, or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

12. Lessor agrees that this lease covers and includes any and all of Lessor's rights in and to any existing well(s) and/or wellbore(s) on said land, other than existing water wells, and for all purposes of this lease the re-entry and use by Lessee of any existing well and/or wellbore shall be deemed the same as the drilling of a new well.

13. Notwithstanding anything to the contrary contained in this lease, at the option of Lessee, which may be exercised by Lessee giving notice to Lessor, a well which has been drilled and Lessee intends to frac shall be deemed a well capable of producing in paying quantities and the date such well is shut-in shall be when the drilling operations are completed.

14. As a result of land development in the vicinity of said land, governmental rules or ordinances regarding well sites, and/or surface restrictions as may be set forth in this lease and/or other leases in the vicinity, surface locations for well sites in the vicinity may be limited and Lessee may encounter difficulty securing surface location(s) for drilling, reworking or other operations. Therefore, since drilling, reworking or other operations are either restricted or not allowed on said land or other leases in the vicinity, it is agreed that any such operations conducted at a surface location off of said land or off of lands with which said land are pooled in accordance with this lease, provided that such operations are associated with a directional well for the purpose of drilling, reworking, producing or other operations under said land or lands pooled therewith, shall for purposes of this lease be deemed operations conducted on said land. Nothing contained in this paragraph is intended to modify any surface restrictions or pooling provisions or restrictions contained in this lease, except as expressly stated.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

LESSOR(S)

Redi-Mix LLC, a Limited Liability Company



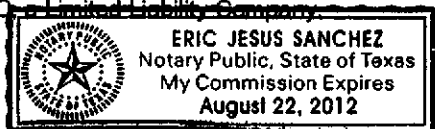
BY: Richard Delle, Controller of Redi-Mix LLC

STATE OF TEXAS)

(ACKNOWLEDGMENT FOR CORPORATION)

COUNTY OF TARRANT)

This instrument was acknowledged before me on the 16th day of September 2009 by Richard Delle, Controller, on behalf of Redi-Mix LLC, a Limited Liability Company.



Signature 
Notary Public

Printed Eric Jesus Sanchez

My commission expires: _____

ADDENDUM
TO OIL, GAS AND MINERAL LEASE
DATED September 16th, 2009,
BETWEEN REDI-MIX, LLC., LESSOR,
AND XTO ENERGY INC., LESSEE

THIS ADDENDUM to Oil, Gas and Mineral Lease (the "Addendum") is attached to and forms a part of the above-described Oil, Gas and Mineral Lease ("Lease"). In the event of any conflict or inconsistency, the terms and provisions of this Addendum shall prevail over the terms and provisions of the Lease. Notwithstanding anything to the contrary in the Lease to which this Addendum is attached, the Lease is made, executed, delivered, and accepted subject to the following terms, provisions, covenants, limitations, exceptions, reservations, and conditions:

15. No surface rights or privileges of any kind, express or implied, are conveyed or granted to Lessee by this Lease, and any express or implied right to use, traverse or disturb the surface of the land covered hereby in connection with the exploration, drilling, development, production, storage, processing, transportation or marketing of hydrocarbons covered by this Lease, or for any other purpose, is expressly disclaimed and negated.

16. This Lease covers only oil, gas and related hydrocarbons. This Lease does not cover any other minerals, including, but not limited to, coal, lignite, uranium and other radioactive ores, helium, carbon dioxide, sand, gravel, caliche, stone, bentonite, fuller's earth or commercial clays, except such amounts of sulphur as may unavoidably be produced through the wellbore with oil, gas, and related hydrocarbons.

17. Lessor's royalty shall be calculated free and clear of costs and expenses for exploration, drilling, development and production, including, but not limited to, dehydration, storage, compression, separation by mechanical means and product stabilization, incurred prior to the oil, gas and other mineral production leaving the leased premises or prior to delivery into a pipeline or gathering system, whichever occurs first; provided, however, Lessor's royalty shall bear its proportionate share of all ad valorem taxes and production, severance and other taxes and the actual, reasonable costs (including compression and related fuel charges) paid to or deducted by an unaffiliated third party to transport, compress, stabilize, process or treat the oil, gas and other mineral production off the leased premises in order to make the oil, gas and other mineral production saleable, increase its value or in order to get the oil, gas and other mineral production to a market. Notwithstanding anything contained herein to the contrary, in no event shall Lessor receive a price that is less than the price received by Lessee in sales to the first non-affiliate point of sale. THE FOREGOING PROVISIONS ARE TO BE FULLY ENFORCEABLE AND EFFECTIVE AND ARE NOT TO BE CONSTRUED AS "SURPLUSAGE" under the principles set forth in *Heritage Resources vs. NationsBank*, 939 S.W.2d 11B (1997).

18. The royalty on any sulphur unavoidably produced through the wellbore with oil, gas, or related hydrocarbons shall be twenty-five percent (25%) of the amount realized by Lessee from the sale of such sulphur.

19. This Lease may be continued in effect by the payment of shut-in royalties, as provided in Paragraph 3 of the printed portion of the Lease, for no longer than twenty-four (24) consecutive months, or five (5) years in the cumulative.

20. If Lessee desires to pool or unitize the leased premises, then all of the leased premises shall be included in such pool or unit. Any pool or unit formed under this Lease shall be effective upon the filing of an instrument identifying and describing the pool or unit in the official real property records of Tarrant County, Texas.

21. At the expiration of the primary term or such later date on which Lessee ceases continuous drilling operations, reworking operations, or upon the expiration of any other provision then maintaining this Lease, this Lease shall terminate automatically as to all the leased premises, except acreage then included within the proration unit or pooled unit for each well located on the leased premises or lands pooled therewith then producing or capable of producing oil or gas in paying quantities.

22. Lessee's delivery of a release of this Lease shall in no event relieve Lessee of obligations arising prior to such release.

23. Operations for drilling shall be deemed to have commenced under this Lease only after a derrick, a rig, and machinery capable of drilling to a depth sufficient to test a prospective oil or gas horizon have "spudded-in" and are rotating under power. "Reworking operations," as that term is used in this lease, means actual work in the hole, conducted in a good and workmanlike manner, and prosecuted with reasonable diligence. The completion date of a well capable of commercial production shall be the day upon which all work in the hole has been completed prior to running an official potential test. The completion date of a well which is a dry hole shall be the day upon which all work in the hole has been completed prior to plugging and abandonment.

24. Any notice or other communication required or permitted by this Lease to be given by Lessor to Lessee shall be deemed to have been given and received three days after Lessor deposits such notice in the United States mail, properly addressed to Lessee at the address first set forth above, postpaid, with return receipt requested. Lessee may change such address from time to time, but no such change of address shall be binding upon Lessor until Lessee has first furnished Lessee actual written notice of such change of address.

25. All references in the printed portion of this Lease to a 22.5% royalty are hereby changed to read "twenty-five percent (25%)," it being the intention of the parties that, notwithstanding anything in the printed portion of this Lease to the contrary, Lessor shall receive a twenty-five percent (25%) royalty on all oil, gas and casinghead gas

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Lessor: 

Lessee: ESA

produced or attributable to the Lease including plant products.

26. In the event of assignment by Lessee, which shall be filed in the appropriate county records, Lessee shall be relieved from only such obligations which accrued after, not before, such assignment in accordance with Paragraphs 8 of the Lease.

27. Notwithstanding anything in Paragraph 9, if Lessee violates, fails to perform or breaches any terms or covenants in this Lease, Lessor shall notify Lessee in writing of the violation, failure, or breach. Lessee shall have a period of 60 days from the date of its receipt of Lessor's written notice, in which to remedy or commence to remedy the violation, failure, or breach. The delivery of such notice shall be a condition precedent to the bringing of an action by Lessor under this Lease for any cause, and no such action shall be brought until the expiration of sixty (60) days after the delivery of such notice to Lessee; provided, however, that Lessor may commence an action prior to the expiration of such sixty (60) day period (i) in order to seek a temporary restraining order or interim injunctive relief; or (ii) if Lessor reasonably believes that a delay in commencement of the action may result in all or a portion of Lessor's claim being barred by applicable statutes of limitations, the Lessor has requested that the Lessee execute an agreement tolling the running of limitations, and the Lessee fails to timely execute and deliver to Lessor a tolling agreement in form and substance reasonably acceptable to Lessor. Neither the delivery of such notice, nor Lessee's performance of any acts aimed to remedy all or any of the alleged breaches shall be deemed an admission or create a presumption that Lessee has failed to perform its obligations hereunder. In addition to any other remedy granted herein, if Lessee fails to remedy or commence to remedy such breach or default within the 60-day period or if such breach or default involves any environmental or regulatory issue, Lessor is hereby granted the right (but shall not have the obligation) to remedy such breach or default after giving five (5) days notice of such intent. If litigation is pursued and a final judicial determination is made, the non-prevailing party shall be liable for any and all reasonable costs and expenses incurred by the prevailing party in enforcing the terms of this Lease or defending allegations of breach, including reasonable attorney's fees and interest on all money expended by Lessor to remedy such breach or default (if applicable) at the simple annual rate of 8%. Provided however, if this lease is cancelled for any cause other than a failure to pay royalties in accordance with the provisions of this lease, this lease shall remain in force and effect as to sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than 40 acres), such acreage to be designated by Lessee as nearly practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require.

28. Paragraph 7 shall be deleted in its entirety.

29. Upon expiration or termination of this Lease for any reason as to all or any portion of the Leased Premises, Lessee shall, at Lessee's expense, promptly prepare, execute and within ninety (90) days of such expiration or termination file in the public records in the county in which the said Leased Premises is located an appropriate release instrument covering all or such portion of said Leased Premises as may be applicable hereunder, and shall promptly forward a copy of same as so recorded to Lessor

30. Lessee shall at all times comply with all laws, rules and regulations of all governmental departments and agencies with jurisdiction over the Leased Premises and Lessee's operations hereunder, including but not limited to those directed at protecting human health, natural resources and the environment, such as (by way of example and not limitation and including all amendments) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (the "Clean Water Act"); the Clean Air Act, 42 U.S.C. § 7401 et seq. the Hazardous Materials Transportation Act, 49 U.S.C. § 1471 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and the Atomic Energy Act, 42 U.S.C. § 2011 et seq., all regulations promulgated pursuant thereto, and all applicable state law counterparts. Lessee shall satisfy any and all governmental permitting requirements to conduct Lessee's operations hereunder.


31. No oil, gas, or water from Lessor's land shall be used for repressuring, pressure maintenance, cycling, or secondary recovery activities, except in connection with, and for the direct benefit of, oil or gas wells on lands pooled or unitized with said land.

32. LESSEE AGREES TO IMMEDIATELY AND FULLY INDEMNIFY, DEFEND AND HOLD LESSOR, ITS TENANTS, INVITEES, REPRESENTATIVES, AGENTS AND EMPLOYEES, AND THEIR RESPECTIVE HEIRS, SUCCESSORS, LEGAL REPRESENTATIVES AND ASSIGNS (COLLECTIVELY, THE INDEMNIFIED PARTIES") HARMLESS AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, DEMANDS, FINES, LEVIES, PENALTIES, ENVIRONMENTAL ACTION, TREATMENT OR CORRECTION, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, REASONABLE ATTORNEY'S FEES, AND COURT COSTS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE OPERATIONS OF LESSEE HEREUNDER., WHETHER THROUGH ITS AGENTS, EMPLOYEES, REPRESENTATIVES, INDEPENDENT CONTRACTORS, OR THOSE IN CONTRACTUAL PRIVITY WITH LESSEE. LESSEE'S INDEMNITY OBLIGATIONS SHALL SURVIVE THE TERMINATION OF THIS LEASE.

33. Lessor shall, at Lessor's cost and expense, have the right, exercisable not more than once during any 90 day period, to audit and review during Lessee's normal business hours all information (including without limitation, all books, records, contracts, correspondence, run tickets, evidence of sales and shipments, reports and

Initialed for identification:

Lessor: 

Lessee: ESL 

analyses, and electronically stored information and data) possessed by or available to Lessee insofar, and only insofar, as such information is pertinent to the determination of the payment of royalty or other amounts due under this Lease or to the maintenance of this Lease by production in paying quantities, at the office where such information is maintained. Such information shall include that submitted to third parties (including government entities) respecting production from the Leased Premises or lands pooled therewith.

34. Lessee shall promptly pay all costs and expenses incurred in its operations upon the leased premises and shall not permit any of the same to become delinquent, unless contested in good faith by appropriate proceedings. In no event shall Lessee permit any lien, encumbrance or other charge to attach to the leased premises as a consequence of its operations thereon, and Lessee shall promptly remove and discharge any such lien or encumbrance that may be filed or attached, and Lessee does hereby agree to indemnify, defend and hold Lessor harmless with respect to the same.

35. Lessor hereby warrants and agrees to defend title to the Land against all claims arising by, through or under Lessor, but not otherwise. Lessee at its option may pay and discharge any taxes, mortgages, or other liens existing, levied or assessed on or against the leased premises, either in whole or in part, arising by, through or under Lessor, and in the event Lessee does so, it shall be subrogated to such lien with the right to enforce same and apply rentals and royalties accruing hereunder toward satisfying same. If Lessor owns an interest in the Land less than the entire fee simple estate, then the royalties (including shut-in royalties) payable hereunder will be reduced proportionately.

36. Lessee shall obtain Lessor's prior written consent to any assignment or other transfer of all or any portion of Lessee's working interest in this Lease, such consent not to be unreasonably withheld; provided, however, that Lessor's prior written consent shall not be required in connection with a grant by Lessee of any lien or security interest in the Lease. For purposes of this provision, a transfer of the Lease requiring Lessor's consent shall include a stock sale, merger, or other change in control of Lessee. Lessee shall promptly furnish to Lessor recorded copies of all assignments or other instruments by which this Lease or any interest in or under this Lease is transferred or assigned. In the event of assignment by Lessee, which shall be filed in the appropriate county records, Lessee shall be relieved only from obligations which accrued after, not before, such assignment in accordance with paragraph 8 of the Lease.

37. Paragraph 10 is deleted in its entirety.

38. Should Lessee be prevented by reason of Force Majeure from complying with any express or implied covenant of this lease (other than a requirement to pay money), from conducting drilling or reworking operations on the leased premises or on lands pooled therewith, or from producing oil or gas, then while so prevented, that covenant will be suspended; Lessee will not be liable for damages for failure to comply therewith; this lease will be extended so long as Lessee is prevented from conducting drilling or reworking operations on or from producing oil or gas from the leased premises or lands pooled therewith; and the time while Lessee is so prevented will not be counted against Lessee. "Force Majeure" means any Act of God, including floods, hurricanes, washouts, and landslides; any federal or state law; any rule or regulation of governmental authority; scarcity or delay in obtaining materials, equipment, or labor; or delays in obtaining permits. If Lessee by force majeure is prevented from conducting drilling operations, reworking operations, or producing operations, then until such time as such force majeure is terminated and for a period of sixty (60) days after such termination each and every provision of this Lease that might operate to terminate it or the estate conveyed by it shall be suspended and inoperative and this lease shall continue in full force. The benefits and rights of this force majeure clause shall be available only when the cause claimed is the proximate cause of a delay or failure to perform, and only so long as Lessee is using its best efforts, exercised in good faith, to remedy or eliminate the force majeure. In no case will the existence of a condition of force majeure excuse the performance of any act or duty of Lessee for a period of more than one (1) year. As a condition of Lessee's utilizing the rights granted under this force majeure clause, Lessee shall, within fifteen (15) days of the occurrence of such force majeure event, provide Lessor with written notice of the claim, outlining the reasonably full particulars of the basis of the force majeure claim and the force majeure provisions of this Paragraph 41 shall apply only if and from the date the Lessee gives Lessor written notice of the nature and cause of Lessee's inability to comply with any express or implied covenant of this Lease, and only so long thereafter as Lessee diligently undertakes to remove such cause and resume performance as soon as reasonably possible. Notwithstanding the foregoing, the provisions of this paragraph shall never excuse Lessee from making any payment required by the Lease.

Notwithstanding the provisions of this force majeure clause, this provision shall not apply to or excuse any delay or discontinuation of operations resulting from exhaustion or unavailability of any product, labor or service or material for periods of time in excess of 90 days.

39. Paragraph 11 is deleted in its entirety.

40. Paragraph 12 is deleted in its entirety.

The foregoing typewritten provisions shall supersede and govern the provisions in the printed text hereof, even when to the contrary or apparently to the contrary, and shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, representatives, successors and assigns.

Initialed for identification:

Lessor: 

Lessee: ESR

JD

LESSOR:

REDI-MIX, LLC

By: [Signature]
Name: RICHARD D. DYLE
Title: Regional Controller

LESSEE:

XTO ENERGY INC.

By: [Signature]
Name: EDWIN S. RYAN, Jr.
Title: Sr. VP. Land Administration VR

Initialed for identification:

Lessor: [Signature]

Lessee: ESP

VR